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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,091	03/12/2004	Ashok Kumar Gadangi	G&C 30566.316-US-01	7593

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EXAMINER
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WILSON, YOLANDA L

ART UNIT	PAPER NUMBER
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2113

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/799,091

Applicant(s)

GADANGI ET AL.

Examiner

Yolanda L. Wilson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims are rejected under 35 U.S.C. 102(e) as being anticipated by Voas et al. (USPN 6862696B1). As per claims 1,29, Voas et al. discloses (a) maintaining information concerning the program failures at a customer's computer, and (b) transmitting the information to a vendor's computer, (c) wherein the information is used to measure the mean time between the program failures at the customer's computer in column 9, line 64 – column 10, line 22; column 13, lines 17-39.
3. As per claims 2,16,30, Voas et al. discloses wherein the information comprises a running count of the program failures at the customer's computer in column 9, lines 42-63.
4. As per claims 3,17,31, Voas et al. discloses wherein the mean time between program failures is computed using the running count in column 13, lines 17-39.
5. As per claims 6,20,34, Voas et al. discloses wherein the running count of program failures is maintained per user in column 9, line 64 – column 10, line 22.

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6. As per claims 7,21,35, Voas et al. discloses wherein the running count of program failures is maintained per program version in column 9, line 64 – column 10, line 22.

7. As per claims 8,22,36, Voas et al. discloses wherein the information further comprises a unique identifier for the program in column 9, line 64 – column 10, line 22. The unique identifier is the name of the program.

8. As per claims 9,23,37, Voas et al. discloses wherein the information further comprises a unique identifier for each user of the program in column 9, line 64 – column 10, line 22.

9. As per claims 10,24,38, Voas et al. discloses wherein the information further comprises a unique identifier for each version of the program in column 9, line 64 – column 10, line 22. The unique identifier is the version number.

10. As per claims 11,25,39, Voas et al. discloses further comprising storing start and end times for each time the program is used on the customer's computer in order to determine a total running time for the program in column 13, lines 4-10.

11. As per claim 15, Voas et al. discloses one or more computers; and logic, performed by the computers, for: (a) maintaining information concerning the program failures at a customer's computer, and (b) transmitting the information to a vendor's computer, (c) wherein the information is used to measure the mean time between the program failures at the customer's computer in column 9, line 64 – column 10, line 22; column 13, lines 17-39.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 12,13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voas et al. in view of Woodbury et al. As per claim 12, Voas et al. fails to explicitly state measuring any idle time during each use of the program and subtracting the idle time from the total running time in order to compute an actual running time for the program.

Woodbury et al. discloses this limitation on page 7, 'The triad idle time is determined by subtracting the execution times of all the tasks executed by that triad during the major frame.'

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have measuring any idle time during each use of the program and subtracting the idle time from the total running time in order to compute an actual running time for the program. A person of ordinary skill in the art would have been motivated to have measuring any idle time during each use of the program and subtracting the idle time from the total running time in order to compute an actual running time for the program because the execution time is determined by subtracting the idle time during a particular time period.

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14. As per claims 13,27,41, Voas et al. discloses further comprising computing a ratio of the actual running time of the program and a running count of the program failures in column 13, lines 1-16.

15. As per claims 14,28,42, Voas et al. discloses further comprising computing the ratio of the actual running time of the program and the running count of the program failures, averaged over all users in column 13, lines 18-40.

***Claim Rejections - 35 USC § 112***

16. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

17. Claims 4,5,18,19,32,33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 4,18,32, it is unclear as to how the mean time is being computer by having an increase in the running count.

***Claim Rejections - 35 USC § 101***

18. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

19. Claims 15-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 15-28 recite 'logic, performed by the computers...'. As disclosed in the specification this logic is software. Therefore, these

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claims merely recite software per se, which is not permissible under the Examination Guidelines for Computers - Related Inventions.

20. Claims 29-42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 29-40 recite 'logic comprising...'. As disclosed in the specification this logic is software. Therefore, these claims merely recite software per se, which is not permissible under the Examination Guidelines for Computers - Related Inventions.


21. Claims 29-42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 29-42 contain the limitations 'An article of manufacture embodying logic...the logic comprising...' This limitation states a program per se. Also, these claims are directed to non-statutory subject matter by way of the specification. A possible correction is 'A computer readable storage medium comprising computer readable instructions stored thereon to be executed on a processor, the instructions comprise...'

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yolanda L. Wilson whose telephone number is (571) 272-3653. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Yolanda L Wilson  
Examiner  
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